

APS-255

May 26, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 04-4535

VINCENT GRAHAM
VS.
JOSEPH BROOKS, ET AL.
(D. Del. Civ. No. 04-cv-00150)

Present: SLOVITER, NYGAARD and FUENTES, Circuit Judges

Submitted are:

- (1) Appellant's notice of appeal, which may be construed as a request for a certificate of probable cause; and
- (2) By the Clerk is the within appeal for possible summary action pursuant to 3rd Circuit Local Appellate Rule 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures

in the above-captioned case.

Respectfully,

Clerk

MMW/JJT/je/lwc

O R D E R

The foregoing request for a certificate of appealability is denied. Appellant has failed to demonstrate that jurists of reason would find debatable the District Court's dismissal without prejudice of Appellant's habeas corpus petition. See Miller-El v. Cockrell, 537 U.S. 322, 337-38 (2003). Accordingly, Appellant has failed to make a substantial showing of the denial of a constitutional right. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); 28 U.S.C. § 2253(c)(2).

By the Court,

/s/ Richard L. Nygaard
Circuit Judge



Dated: June 15, 2005

Marcia M. Waldron
Marcia M. Waldron, Clerk

lwc/cc: Mr. Vincent Graham
Thomas E. Brown, Esq.